

INTELLIGENCE AUTHORIZATION ACT FOR  
FISCAL YEAR 1987

CHANGES IN EXISTING LAW

NOTE: Where applicable, changes in existing law are shown as follows: existing law in which no change is proposed is shown in roman; existing law proposed to be struck is enclosed in brackets; new material is underscored.

TITLE I

INTELLIGENCE ACTIVITIES

Section 101: No substantive change.

Section 102: No substantive change.

Section 103: No substantive change from Section 104 of the fiscal year 1986 Act.

## TITLE II

### INTELLIGENCE COMMUNITY STAFF

Section 201: No substantive change.

Section 202: No substantive change.

Section 203: No substantive change.

## TITLE III

### CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Section 301: No substantive change.

## TITLE IV

### ADMINISTRATIVE PROVISIONS RELATED TO INTELLIGENCE AGENCIES

Section 401: Amends section 3303a of Title 44, United States Code, by adding at the end thereof the following new subsection:

(g) The requirement in subsection (a) of this section that the Archivist provide notice in the federal register of the list and schedule of records proposed for disposal shall not apply to the Central Intelligence Agency or the National Security Agency.

Section 402: Amends the National Security Act of 1947 (50 U.S.C. 401 et seq.) by adding at the end of section 102a the following new section:

SEC. 102b. In any civil action, suit, or proceeding in which the United States or any officer, employee or agent thereof is a party, or in which the United States has an interest, an interlocutory appeal may be taken as of right from a decision of any court of the United States, or a judge thereof, on any evidentiary or discovery matters, or potentially dispositive motions, if the Director of Central Intelligence certifies that the decision will have an adverse impact upon the national security of the United States. In such cases, appeal may be taken upon application of the Attorney General to the appropriate courts of appeals, which shall have jurisdiction of appeals under this provision, except where direct review may be had in the Supreme Court. A stay of all proceedings shall be granted pending disposition of the appeals.

Section 403: Amends the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) by adding at the end thereof the following new section:

Extra Credit for Service at Unhealthful Posts

SEC. 16. The provisions of subsection 251 (b) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) authorizing the Director of Central Intelligence to establish a list of unhealthful posts for which an extra retirement credit for service at such posts may be provided to an Agency employee who is a participant in the Civil Service Retirement and Disability System or in a new Government retirement system as defined in the Federal Physicians Comparability Allowance Act of 1978, as amended, in the same manner and to the same extent in the case of an Agency employee who is a participant in the Central Intelligence Agency Retirement and Disability System."

Section 404: (a) Amends the Central Intelligence Act of 1949 (50 U.S.C. 403a et seq.) by adding at the end of Section 16 the following new section:

SEC. 17. In its discretion, the Agency may, on the grounds of prior or current alcohol or drug abuse, deny to or remove from any individual access to classified information; refuse to hire any applicant for Agency employment; and,

terminate, suspend, or place limitations or conditions on the continued employment of any Agency employee, notwithstanding any other provisions of law."

(b) Amends the National Security Agency Act of 1959 (50 U.S.C. 402 note):

- 1) by redesignating section 2 as section 2(a) and
- 2) by adding at the end thereof the following new subsection:

b) The Secretary of Defense (or his designee for the purpose) may, in his discretion, on the grounds of prior or current alcohol or drug abuse, deny to or remove from any individual access to classified information; refuse to hire any applicant for Agency employment; and, terminate, suspend, or place limitations or conditions on the continued employment of any Agency employee, notwithstanding any other provisions of law.

Section 405 (a): Amends the National Security Act of 1947 (50 U.S.C. 401 et seq.) by adding at the end thereof the following new section:

Section 1001. (a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 of the United States Code for claims for injury or loss of property, or personal injury or death, resulting from the negligent or wrongful act of omission of any officer or employee of the Intelligence Community while acting within the scope of his office or employment shall hereafter be exclusive of any other civil action or proceeding, arising out of or relating to the same subject matter, against the officer or employee whose act or omission gave rise to the claim, or against the estate of such officer or employee.

(b) The United States shall be liable, to the extent that liability for such tort is recognized or provided by applicable Federal law, for claims for money damages sounding in tort arising under the

Constitution of the United States resulting from an act or omission of any officer or employee of the Intelligence Community while acting within the scope of his office or employment. Such claims shall be treated in the same manner as claims cognizable under section 1346(b) and 2672 of title 28 of the United States Code. The remedy against the United States provided by this subsection shall hereafter be exclusive of any other civil action or proceeding, arising out of or relating to the same subject matter, against any officer or employee whose act or omission gave rise to any employee. This remedy shall be deemed an equally effective substitute for any recovery against the officer or employee in his individual capacity directly under the Constitution. The United States shall not be liable for interest prior to judgment or for punitive damages.

- (c) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) and (b) of this section (or the estate of such person) for any such claims. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or any attested true copy thereof to such person's immediate superior or to whomever was designated by the Federal agency, which employed the individual at the time of the alleged act or omission that gave rise to the action or proceeding, to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the action or proceeding is brought, to the Attorney

General and to the head of that Federal agency.

- (d) Upon certification by the Attorney General that the defendant officer or employee was acting within the scope of his office or employment at the time of the incident out of which the action arose, any civil action or proceeding commenced in the United States district court shall be deemed an action against the United States under the provisions of title 28 of the United States Code and all references thereto, and the United States shall be substituted as the party defendant.
- (e) Upon certification by the Attorney General that the defendant officer or employee was acting within the scope of his office or employment at the time of the incident out of which the action arose, any civil action or proceeding described in subsection (c) which is commenced in a State court shall be removed, without bond, at any time before trial, by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action shall be deemed an action brought against the United States under the provision of title 28 of the United States Code and all references thereto, and the United States shall be substituted as the party defendant. The certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.
- (f) In any civil action or proceeding brought under this section, the United States shall have available all defenses heretofore available to the officer or employee whose act or omission gave rise to the claim, and all defenses to which it would have been entitled if the action had originally been commenced against the United States under section 1346(b) and sections 2671 through 2680 of title 28 of the United States Code, except that section 2680(k) shall not apply to any cause of action covered by this section.

- (g) The Attorney General may compromise or settle any claim asserted in any such civil action or proceeding in the manner provided in section 2677 of title 28 of the United States Code, and with the same effect.

## TITLE V

### SUPPORT FOR DEFENSE INTELLIGENCE COLLECTION ACTIVITIES

Section 501: Amends subtitle(a) of Title 10, United States Code, by adding the following new chapter after Chapter 18:

#### CHAPTER 19 - SUPPORT FOR INTELLIGENCE

##### SEC.

- 391. Purpose of this chapter.
- 392. Definition.
- 393. Authority to conduct commercial cover.
- 394. Authority to acquire logistic support, supplies, and services.
- 395. Oversight.
- 396. General Provisions.

##### SEC. 391. Purpose of this chapter.

The purpose of this chapter is to provide clear authority for the Secretary of Defense or the Secretaries of the Military Departments to conduct support activities necessary for authorized and appropriately coordinated intelligence collection activities of the Department of Defense.

##### SEC. 392. Definition.

a. "Intelligence collection activities" means the collection of foreign intelligence or counterintelligence information by intelligence components of the Department of Defense.

b. "Intelligence support activities" means those activities described in sections 393 and 394, below.

c. "Foreign intelligence" means information relating to the capabilities, intentions, and activities of foreign powers, organizations, or persons, but not including counterintelligence except for information on international terrorist activities.

d. "Counterintelligence" means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassination conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

e. "Commercial cover" means a business entity that is established solely to conceal the role of an intelligence component of the Department of Defense as it performs intelligence collection activities.

SEC. 393. Authority to conduct commercial cover.

a. The Secretary of Defense or the Secretaries of the Military Departments, after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation as appropriate, may establish and conduct commercial entities such as corporations, partnerships, sole proprietaries, and other business entities as commercial covers to support intelligence collection activities of the Department of Defense, as defined herein. Such commercial entities may be established only upon written certification by the Secretary concerned that commercial cover is necessary to the conduct of authorized intelligence collection activities.

b. The establishment and operation of commercial entities pursuant to this section shall be in accordance with prevailing commercial practices so long as such practices are not inconsistent with the purposes of commercial cover. To this end, laws applicable to federal appropriations, federal property management, federal acquisitions, federal employment and government corporations shall not apply to the establishment and operation of commercial covers upon the written certification by the Secretary concerned or his designee

for the purpose that the application of such laws would risk the compromise of commercial cover.

c. The Secretary of Defense or the Secretaries of the Military Departments, or their designees, are authorized to deposit and withdraw funds appropriated for the Department of Defense used to conduct commercial cover and funds generated by the business entities authorized by this section in banks or other financial institutions.

d. Funds generated by such business entities may be used to offset necessary and reasonable expenses incurred by the commercial cover. As soon as practicable, funds generated by a commercial cover that are no longer necessary for the conduct of that commercial cover shall be deposited in the Treasury of the United States as miscellaneous receipts.

e. Upon the liquidation, dissolution, sale, or other final disposition of a commercial cover established and conducted under the provisions of this section, the funds, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

SEC. 394. Authority to acquire logistic support, supplies, and services.

a. Subject to the availability of appropriations, the Secretary of Defense or the Secretaries of the Military Departments, or their designees, may acquire any goods, services, property, buildings, facilities, space, insurance, licenses and any equipment necessary in order to establish or maintain a commercial cover.

b. Acquisitions made under the provisions of this section are to be made utilizing procedures consistent with prevailing commercial practice so long as such practices are not inconsistent with the purposes of the commercial cover. To this end, laws applicable to federal acquisitions, federal appropriations, federal property management, and federal employment shall not apply where the application of such laws would risk compromise of the commercial cover.

SEC. 395. Oversight.

The Secretary of Defense shall establish a system to ensure oversight of and accountability for the intelligence support activities conducted pursuant to sections 393 and 394 of this title.

SEC. 396. General Provisions.

a. The intelligence support activities authorized pursuant to sections 393 and 394 may be conducted only in accordance with regulations promulgated by the Secretary of Defense.

b. The Secretary of Defense, or Secretaries of the Military Departments shall ensure that elements of the Department of Defense that undertake intelligence support activities pursuant to this chapter conduct an annual review and audit of such support activities and shall ensure that the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence are kept fully and currently informed of such activities, as prescribed in section 413 of Title 50.

c. Intelligence support activities authorized under this chapter shall be protected pursuant to 50 U.S.C. 403(d)(3).

d. The table of chapters at the beginning of subtitle A of such title and at the beginning of Part I of such subtitle are each amended by inserting after the item relating to chapter 18 the following new item:

19. Support for Intelligence.....391.

TITLE VI - ENHANCED FBI COUNTERINTELLIGENCE  
CAPABILITIES

Section 601(a): Amends Section 1114(a)(1) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414) as follows:

(a)(1) Nothing in this chapter (except sections 3415, 3417, 3418, and 3421 of this title) shall apply to the production and disclosure of financial records pursuant to requests from[--

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities; or

(B)] the Secret Service for the purpose of conducting its protective functions (18 U.S.C. 3056; 3 U.S.C. 202, Public Law 90-331, as amended).

(b) Amends Section 1114 by adding at the end thereof the following:

(c) (1) Notwithstanding any provisions of federal, state, local or foreign law to the contrary, a financial institution, or officer, employee, or agent of a financial institution, shall provide access to, and copies of, financial records of a customer that are responsive to a request made by a Government authority authorized to conduct foreign intelligence or counterintelligence activities, for purposes of conducting such activities;

(2) A request for access to, or copies of, financial records, for foreign intelligence or counterintelligence purposes, by a Government authority authorized to conduct such activities, shall include the certificate required in section 3403(b) of this Title, signed by a supervisory official of a rank designated by the head of the Government authority.

(3) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that a Government authority described in paragraph (1) has sought or obtained access to a customer's financial records.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

(5) The provisions of sections 3415, 3417, 3418 and 3421(b) shall apply to requests made pursuant to this subsection."

Section 602: Amends section 6103(i) of title 26, United States Code by adding at the end thereof the following new paragraph:

(8) Federal Bureau of Investigation Counterintelligence Activities --Upon a determination by the Attorney General of his designee that there is probable cause to believe that a taxpayer is a foreign power or an agent of a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)), the return of the taxpayer and return information which relates to such taxpayer shall, upon request for foreign counterintelligence purposes by the Federal Bureau of Investigation approved by the Attorney General, be open (to the extent of the approved request) to inspection by,

or disclosure to, the Federal Bureau of Investigation. The Federal Bureau of Investigation is authorized to transfer taxpayer information obtained pursuant to this subsection to another federal agency or department when it is relevant to foreign counterintelligence matters within the jurisdiction of that agency or department.

Section 603(a): Amends Chapter 33 of Title 28 by adding at the end thereof the following new section:

SEC. 538. Access to Telephone Toll Records

(a) Upon receipt of a certification signed by the Director of the Federal Bureau of Investigation or a supervisory official of a rank designated by the Director, that the Federal Bureau of Investigation is conducting a foreign counterintelligence investigation in accordance with applicable guidelines established by the Attorney General of the United States, a communications common carrier shall produce requested telephone subscriber information and toll billing record information.

(b) No officer, employee, or agent of the communications common carrier shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to the subscriber information and/or toll billing record information.

(c) The Federal Bureau of Investigation is authorized to disseminate information obtained pursuant to this section to other agencies within the Intelligence Community, as defined in Executive Order 12333, when the information is relevant to foreign counterintelligence responsibilities of such agency.

(b) Amends the table of contents for chapter 33 of Title 5, United States Code by adding at the end thereof the following:

538. Access to Telephone Toll Records.

Section 604: No substantive change

Section 605(a): Amends Section 9101(b) of Title 5 as follows:

(1) (b)(1) Upon request by the Department of Defense, the Office of Personnel Management, [or] the Central Intelligence Agency, or the Federal Bureau of Investigation, criminal justice agencies . . .

(2) (b)(3)(A) Upon request by a State or locality, the Department of Defense, the Office of Personnel Management, [or] the Central Intelligence Agency, or the Federal Bureau of Investigation shall enter into an agreement . . .

(3) (b)(3)(B) When the Department of Defense, the Office of Personnel Management, [or] the Central Intelligence Agency, or the Federal Bureau of Investigation" and a State . . .

(4) (c) The Department of Defense, the Office of Personnel Management, [or] the Central Intelligence Agency, or the Federal Bureau of Investigation shall not obtain . . .

(b) Amends Title VIII of the Intelligence Authorization Act for Fiscal Year 1986 as follows:

Sec. 803(a) Within two years after the date of enactment of this Act, the Department of Justice, after consultation with the Department of Defense, the Office of Personnel Management, [and] the Central Intelligence Agency, and the Federal Bureau of Investigation, shall report . . .

## TITLE VII

### DOD ADMINISTRATIVE AND PERSONNEL IMPROVEMENTS

Section 701: amends Section 624 of title 10, United States Code as follows:

(c)(1) Appointments under this section shall be made by the President, by and with the advice and consent of the Senate, except that appointments under this section in the grade of first lieutenant or captain or lieutenant (junior grade) or lieutenant shall be made by the President alone.

(c)(2) Upon a determination by the Secretary concerned that the appointment procedures in subsection (c)(1) may be harmful to the safety or well-being of an officer because of that officer's participation in classified intelligence operations or that such procedures with respect to a specific officer could compromise an ongoing classified intelligence operation,

the Secretary of Defense shall approve the use of a secure promotion list for the appointment of affected officers and shall present such list to the President. The President alone may appoint the officers on that list in grades below brigadier general or rear admiral (lower half). The Secretary of Defense shall report on the number of officers promoted under this paragraph and the grades to which promoted at least once a year to the Committees on Armed Services of the Senate and House of Representatives.

Section 702: Amends paragraph 1604(e)(1) of chapter 83 of title 10, United States Code, to extend the termination authority granted to the Secretary of Defense in this paragraph two additional fiscal years as follows:

Sec. 1604.

"(e)(1) Notwithstanding any other provisions of law, the Secretary of Defense may, during fiscal years [1985 and 1986] 1987 and 1988, terminate the employment of any civilian officer or employee of the Defense Intelligence Agency whenever he considers that action to be in the interests of the United States and he determines that the procedures prescribed in other provisions of the law that authorize the termination of the employment of such officer or employee cannot be invoked in a manner consistent with the national security. The decisions of the Secretary under this paragraph are final and may not be appealed or reviewed outside the Department of Defense. The Secretary of Defense shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever this termination authority is exercised.

Section 703: Amends chapter 83 of Title 10, United States Code, as follows:

CHAPTER 83--DEFENSE INTELLIGENCE AGENCY CIVILIAN PERSONNEL AND CIVILIAN INTELLIGENCE OFFICERS AND EMPLOYEES OF THE MILITARY DEPARTMENTS

(a) The Secretary of Defense may, without regard to the provisions of any other law relating to the number, classification, or compensation of employees-

(1) establish such positions for civilian officers and employees in the Defense Intelligence Agency and such positions for civilian intelligence officers and employees of the military departments as may be necessary to carry out the functions of such Agency and departments;

(2) appoint individuals to such positions; and

(3) fix the compensation of such individuals for service in such positions.

(b) The Secretary of Defense shall, subject to subsection (c), fix the rates of basic pay for positions established under subsection (a) in relation to the rates of basic pay provided in the General Schedule under section 5332 of title 5 for positions subject to such schedule which have corresponding levels of duties and responsibilities. Except in the case of an officer or employee of the Defense Intelligence Agency or a civilian intelligence officer or employee of the military departments serving as a member of the Defense Intelligence or Military Department Senior Executive Service, no officer or employee of the Defense Intelligence Agency or civilian intelligence officer or employee of the military departments may be paid basic compensation at a rate in excess of the highest rate of basic pay contained in such General Schedule.

(c) The Secretary of Defense is authorized, consistent with section 5341 of title 5, to adopt such provisions of such title as provide for prevailing rate systems of basic pay and to apply such provisions to positions in or under which the Defense Intelligence Agency or the military departments may employ individuals described by section 5342 (a) (2) (A) of such title.

(d) In addition to the basic compensation payable under subsection (b), officers and employees of the Defense Intelligence Agency or civilian intelligence officers and employees of the military departments who are citizens or nationals of the United States or in Alaska may be paid compensation, in accordance with regulations prescribed by the Secretary of Defense, not in excess of an allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute. Such allowances shall be based on-

(1) living costs substantially higher than in the District of Columbia;

(2) conditions of environment which differ substantially from conditions of environment in the continental United States and warrant an allowance as a recruitment incentive; or

"(3) both of the factors described in paragraphs (1) and (2).

(e) With respect to the military departments, the Secretary of Defense may delegate authority under this subsection only to the Secretaries of the military departments.

(f) (1) Notwithstanding any other provision of law, the Secretary of Defense may, during fiscal years 1985 and 1986, terminate the employment of any civilian officer or employee of the Defense Intelligence Agency or may, during fiscal years 1987 and 1988, terminate the employment of any civilian intelligence officer or employee of the military departments whenever he considers that action to be in the interests of the United States and he determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such officer or employee cannot be invoked in a manner consistent with the national security. The decisions of the Secretary under this paragraph are final and may not be appealed or reviewed outside the Department of Defense. The Secretary of Defense shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever this termination authority is exercised.

(2) Any termination of employment under this subsection shall not affect the right of the officer or employee involved to seek or accept employment with any other department or agency of the United States if he is declared eligible for such employment by the Director of the Office of Personnel Management.

(3) With respect to the Defense Intelligence Agency, the Secretary of Defense may delegate authority under this subsection only to the Deputy Secretary of Defense or the Director of the Defense Intelligence Agency or both. An action to terminate any civilian officer or employee by either such officer shall be appealable to the Secretary of Defense.

(4) With respect to the military departments, the Secretary of Defense may delegate authority under this subsection only to the Secretaries of the military departments. An action to terminate any civilian intelligence officer or employee by the Secretary of any military department shall be appealable to the Secretary of Defense.

Section 704(a): Chapter 167 of Title 10, United States Code is amended by adding at the end thereof the following new section:

2795. Exchange of Mapping, Charting and Geodesy Data with Foreign Nations.

The Secretary of Defense may, under such regulations as are deemed appropriate, authorize the Defense Mapping Agency to

exchange or furnish mapping, charting or geodetic data, supplies or services to a foreign country or international organization pursuant an agreement for the production or exchange of such data.

(b) The table of contents of Chapter 167 of Title 10, United States Code, is amended by adding at the end thereof the following:

2795. Exchange of mapping, charting and geodesy data with foreign nations.

Section 705: Amends subsection 1605(a) of chapter 83 of title 10, United States Code as follows:

Section 192. Benefits for certain employees of the Defense Intelligence Agency

"(a) The Director of the Defense Intelligence Agency, on behalf of the Secretary of Defense, may provide to civilian personnel of the Department of Defense who are United States nationals, who are assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices outside the United States, and who are designated by the Secretary of Defense for the purposes of this subsection, allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs (2), (3), (4), (5), (6), (7), (8), and (13) of section 901 and under sections 903, 705 and 2308 of the Foreign Service Act of 1980 (22 U.S.C. 4025; 22 U.S.C. 4081 (2), (3), (4), (5), (6), (7), (8), and (13); 22 U.S.C. 4083; 5 U.S.C. 5924(4)).

Section 706: Amends Chapter 57 of title 10, United States Code, by inserting after section 1124 the following new section:

§1124a. Cash awards for exceptional foreign intelligence collection

(a) Under regulations promulgated by the Director of Central Intelligence, a member of the armed forces may accept a cash award made in recognition of the member's exceptional performance while serving on active duty in collecting or reporting foreign intelligence information affecting the national security of the United States. A cash award under this section is in addition to the pay and allowances of the recipient.

(b) An award under this section may be paid notwithstanding the member's death, separation, or retirement from the armed force concerned.

(b) The table of contents at the beginning of chapter 57 of title 10 is amended by inserting after section 1124 the following new item:

§1124a. Cash awards for exceptional foreign intelligence collection

TITLE VIII

RESTRICTIONS ON ASSISTANCE TO  
FOREIGN POWERS BY FORMER INTELLIGENCE OFFICERS  
OR EMPLOYEES

SEC. 801. The National Security Act of 1947 is amended by adding at the end thereof a new title, Title VIII, to read as follows:

TITLE VIII

RESTRICTIONS ON ASSISTANCE TO FOREIGN  
POWERS BY FORMER INTELLIGENCE OFFICERS  
OR EMPLOYEES

801. Unlawful Assistance

(a) No person, having been at any time within the preceding two years an officer or employee of an Agency within the intelligence community, shall without written approval to do so from the intelligence agency which employed such individual: i) enter into (either directly or indirectly) any employment, advisory, financial or other relationship, whether paid or unpaid, with a designated foreign power; ii) provide aid, services or assistance to a designated foreign power; or, iii) provide guidance, assistance or information to a designated foreign power concerning intelligence or information derived from or directly related to an officer's or employee's former position with the Intelligence Community.

(b) Subsection (a) of this section shall not apply to an officer or employee of a department, agency, or independent establishment of the United States who enters into an employment, advisory, financial or other relationship with a designated foreign power or who provides aid, services or assistance to a designated foreign power in the course of official duties as such officer or employee.

(c) The head of an intelligence agency may in his discretion waive the applicability of subsection (a) of this section to any particular person, or class of persons, formerly employed by such agency, to whom subsection (a) would otherwise apply.

#### 802. Required Reports

(a) A person seeking approval to enter into a relationship or engage in activities which would otherwise be prohibited by section 801 of this Title shall apply to the last intelligence agency which employed such person for approval and shall submit the following information:

- (i) the foreign power involved;
- (ii) The nature of the activity or relationship and anticipated duration of the activity or relationship;
- (iii) the identities of any persons on whose behalf the applicant will be acting in the course of the activity or relationship; and
- (iv) such other information as the head of the intelligence agency shall require to carry out this title.

(b) The head of an intelligence agency to which application is made in accordance with subsection (a) of this section may in his discretion grant approval to enter into a relationship or engage in a particular activity if he concludes that the relationship or activity: (i) will not involve the unauthorized disclosure or use of information classified pursuant to statute or Executive Order; and, (ii) will not be inconsistent with national security. The head of the intelligence agency may in his discretion place conditions upon the grant of approval consistent with national security. All grants of approval, including any applicable conditions, shall be in writing.

(c) A grant of approval in accordance with subsection (b) of this section shall not affect any potential civil or criminal liability, under any provisions of law other than the provisions of this title, of the person to whom approval is granted.

#### 803. Continuing Duty To Report

(a) Every person granted approval to enter into a relationship or engage in an activity in accordance with section 802 of this Title and who continues to be subject to section 801 of this Title shall file with the intelligence

agency which granted the approval a report for each calendar year during the continuation of the financial relationship or activity. Such reports shall be filed within thirty days after the end of the calendar year.

(b) Every person granted approval to enter into a relationship or engage in an activity in accordance with Section 802 of this Title shall file a report of any material change in circumstances affecting the relationship or activity with the intelligence agency which granted the approval within ten days of the occurrence of such change. The head of the intelligence agency may in his discretion require a person reporting a material change to apply for a new grant of approval for the relationship or other activity in accordance with section 802 of this Title. If the head of the intelligence agency declines to grant a new approval in accordance with section 802 of this Title, the person who filed a report of a material change shall terminate the relationship or other activity within ten days after receiving actual notice that the head of the intelligence agency has declined to grant a new approval.

(c) Every person granted approval to enter into a relationship or engage in an activity in accordance with section 802 of this Title shall file a report within thirty days of the termination of the financial transaction or other relationship with the intelligence agency which granted the approval.

(d) Reports required to be filed by this section shall contain such other information as the head of the intelligence agency with which the report must be filed may require to carry out the provisions of this title.

#### 804. False, Misleading, Or Missing Information

(a) It shall be unlawful to fail to file any report required to be filed by Section 803 of this Title. Such failure to file shall be considered a continuing offense for as long as such failure exists, notwithstanding any statute of limitations or other statute to the contrary.

(b) It shall be unlawful to make any false or untrue statement of material fact, or to omit a material fact necessary to make any statement made not misleading with respect to any material fact, in connection with the filing of any applications or reports required by this title.

(c) It shall be unlawful to omit from an application or report required by this title any information which the application or report is required to contain.

#### 805. Enforcement And Penalties

(a) Whoever willfully violates section 801, subsection 802(a), section 803, section 804 of this Title, or any regulation issued in accordance with section 806 of this Title, shall be fined not more than \$10,000 or imprisoned not more than two years, or both; but no person shall be subject to imprisonment under this subsection for the violation of any regulation if he proves that he had no actual knowledge of such regulation.

(b) Whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this Title, or regulations issued thereunder, or otherwise is in violation of the Title, the Attorney General may make application to the appropriate United States district court for an order enjoining such acts, or for an order requiring compliance with any appropriate provision of the Title or regulation thereunder. The district court shall have jurisdiction and authority to issue a temporary or permanent injunction, restraining order or such other order which it may deem proper. The proceedings shall be made a preferred cause and shall be expedited in every way.

#### 806. REGULATIONS

The several heads of agencies within the Intelligence Community shall issue such regulations as may be appropriate to carry out the provisions of this title.

#### 807. Extraterritorial Jurisdiction

There is jurisdiction over an offense or violation under this title committed outside the United States if the individual committing the offense or violation is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act)-8 USC 101(a)(20)).

#### 808. Definitions

For purposes of this title:

- (1) The term 'intelligence agency' or 'agency within the Intelligence Community' shall mean: the Departments of State, the Treasury, Defense, and Energy; the Central Intelligence Agency; the Federal Bureau of Investigation; such other components of the United States Government as the President may designate as intelligence agencies or agencies within the Intelligence Community; the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence.
- (2) The term 'officer or employee' shall mean any person who is--
  - (a) employed by an intelligence agency or assigned or detailed to such agency and assigned to a component with responsibility for the conduct of: (i) foreign intelligence activities, (ii), counterintelligence activities, or (iii) special activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly;
  - (b) employed by the Central Intelligence Agency;
  - (c) employed by the Federal Bureau of Investigation;
  - (d) employed by the National Security Agency
  - (e) a Chief of mission or a member of the United States Foreign Service;
  - (f) A commissioned, warrant, or noncommissioned officer in the armed forces of the United States;
  - (g) a member of the armed forces who is assigned to the United States Army Special Forces; or
  - (h) a staff employee of the Senate Select Committee on Intelligence or the House Permanent Select Committee on Intelligence.
- (3) The term 'designated foreign power' shall mean:
  - (a) a government of a foreign country, a foreign political party, faction, entity or a government in exile of a foreign country;
  - (b) any unit of a foreign government, including any foreign national state, local and municipal government;
  - (c) any international or multinational organization whose membership is composed of any unit of foreign government; and,
  - (d) any agent or representative of any such unit or or such organization while acting as such."

TITLE IX

UNAUTHORIZED DISCLOSURE OF INTELLIGENCE  
INFORMATION

Section 901: Amends the National Security Act of 1947 (50 U.S.C. 401 et seq.), by adding at the end thereof the following new sections:

SEC. 901. Unauthorized Disclosure of Classified  
Information

- (a) Whoever, being or having been an officer or employee of the United States or a person having or having had authorized access to classified information, willfully discloses, or attempts to disclose, any classified information to a person who is not an officer or employee of the United States and who does not have authorized access to classified information, shall be fined not more than \$25,000, or imprisoned not more than five years, or both.
- (b) Whoever, being or having been an officer of employee of the United States or a person having or having had authorized access to classified information, willfully aids or abets the violation of subsection (a), shall be fined not more than \$25,000, or imprisoned not more than five years, or both.
- (c) As used in this section --
  - (i) the term "classified information" means any information or material that has been determined by the United States Government pursuant to an Executive Order, statute or regulation to require protection against unauthorized disclosure for reasons of national security;
  - (ii) the term "disclose" or "discloses" means to communicate, furnish, deliver, transfer, impart, provide, publish, convey, or otherwise make available;

- (iii) the term "authorized access" means having authority, right, or permission to receive classified information or material within the scope of authorized government activities or pursuant to the provisions of a statute, Executive Order, directive of the head of any department or agency who is empowered to classify information, order of any United States court, or provisions of any Rule of the House of Representatives or resolution of the Senate which governs the handling of classified information by the respective House of Congress.
- (d) Nothing in this section shall be construed to establish criminal liability for disclosure of classified information in accordance with applicable law to:
  - (i) any court of the United States, or judge or justice thereof; or
  - (ii) the Senate or House of Representatives, or any committee, subcommittee or joint committee thereof.
- (e) It is an affirmative defense to a prosecution under this section that:
  - (i) before the defendant's disclosure, the information that provides the basis for prosecution under this section officially had been disclosed publicly; or
  - (ii) the defendant did not obtain the classified information that provides the basis for prosecution under this section as a result of his duties as an officer or employee of the United States, or as a result of authorized access to classified information; or
  - (iii) the defendant has submitted the information that provides the basis for prosecution under this section to a department or agency of the United States for prepublication review, whether under a contract which provides for such review or otherwise, or

for declassification review pursuant to the provision of an Executive order, and (a) the United States informed defendant that it did not object to disclosure, or (b) the United States objected to such disclosure, or denied declassification and such objection or denial was overruled in a final opinion or ruling of a court of the United States.

- (f) Prosecution under this section shall be barred unless, prior to the return of an indictment or the filing of any information, the Attorney General and the head of the department or agency responsible for the classified information jointly certify in writing that, at the time of the disclosure, the information constituted properly classified information. Such certification shall be conclusive as to the propriety of the classification except that, if a defendant demonstrates that the information that provides the basis for prosecution under this section was available from public sources or makes a prime facie showing that the information does not meet the substantive criteria for classification under applicable law, the prosecution may proceed if the United States establishes that the information, at the time of the disclosure, was properly classified because the particular disclosure reasonably could be expected to damage the national security. The court, based upon submissions of defendant and the United States, shall determine the information was properly classified. Upon request of the United States, the court's determination of the issue shall be in camera, ex parte. Any determination by the court on the propriety of the classification shall be de novo and a matter of law, and shall be conclusive except as provided in subsection (g) below.
- (g) As interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of the court with respect to the propriety of the classification of the information that provides the basis for prosecution under this section.
- (h) There is jurisdiction under this section over an offense committed outside the United States.

TITLE X

GENERAL PROVISIONS

Section 1001. No substantive change.

Section 1002. No substantive change.